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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,822	03/16/2002	Sheldon S. Chang		2710

7590

01/13/2005

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EXAMINER

JASTRZAB, JEFFREY R

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/099,822	Applicant(s) CHANG, SHELDON S.	
	Examiner Jeffrey R. Jastrzab	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Arguments***

Applicant's arguments filed 10/20/04 have been fully considered but they are not persuasive. Applicant's have added the following to independent claim 7: "means for accepting input for instituting or modifying the ways of taking care of the said patient's diseased heart". With respect to this limitation, there are several ways that the Leachman reference can be read to meet this claim limitation. First, since claims 1-4 do not require any type of telemetric inputting of commands, the fact that the systolic pressure can be "programmed", e.g. column 3 at line 11 of Leachman, Jr. '898, allows for the device to be alterable by a physician if only prior to implantation, and thus could be considered the input means. Further, it is inherent that pacemakers are alterable telemetrically, and even if not specifically in the case of the Leachman, Jr. device, that pacemaker would at least be programmable prior to implantation as well, thus also meeting the added limitation. Applicant made no specific comments or arguments regarding the combinations of references and accordingly those rejections remain as applied in the prior Office Action. Therefore, the art rejections of record stand and are hereby made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 7-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 7, the phrase "the ways of taking care..." is vague since there is no prior mention of "ways" to take care which can be instituted or modified as currently claimed. Claim 8 appears to be incomplete in lines 2-3 regarding the phrase "means to the said". It would appear that - - for sending electrical pulses - - is missing. In Claim 9, in the term (LCBS), it is unclear what the "L" stands for in line 2. Claims 13 and 14 lack antecedent basis for "each of said linear flow blood pumps" and should instead refer to - -said one or more linear blood flow pumps- -.

Claim Rejections - 35 USC § 102

Claims 1-4 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Leachman, Jr. #3911898 for the reasons of record and for the additional comments made above.

Claim Rejections - 35 USC § 103

Claims 3-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold #4995857 in view of Aldrich #6585635 and Freed et al #6132363 for the reasons of record.

Claims 7-10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Leachman, Jr. #3911898 in view of Summers et al #5112349 for the reasons of record.

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Claims 11 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Leachman, Jr. #391 1898 in view of Summers et al #5112349 as applied to claim 7 above, and further in view of Freed et al. for the reasons of record.

Claims 13 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Leachman, Jr. #3911898 in view of Summers et al #5112349 as applied to claim 7 above, and further in view of Phillips #4955856 for the reasons of record.

Claim 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Leachman, Jr. #391 1898 in view of Summers et al #51 12349 and Freed et al as applied to claims 11 and 12 above, and further in view of Lewis et al. for the reasons of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (571) 272*4947. The examiner can normally be reached on Monday - Wednesday 5:30a.m. to 4:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey R. Jastrzab
Primary Examiner
Art Unit 3762

1/11/5